
DEPARTMENT OF STATE REVENUE
Revenue Ruling #2008-01 IT
September 12, 2008

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

Corporate Adjusted Gross Income Tax/Gross Premiums Tax – Medicare Part D Program Insurance Plans

Authority: 42 CFR §423.440, [IC 6-3-1-10](#), [IC 6-3-2-1\(b\)](#), [IC 6-3-2-2.8\(4\)](#), [IC 27-1-18-2](#)

The taxpayer requests the Department to rule on the following issues:

1. Is taxpayer subject to the Indiana gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law?
2. If taxpayer is subject to Indiana gross premium tax, then is taxpayer exempt from Indiana corporate income tax?

STATEMENT OF FACTS

Taxpayer, a wholly-owned indirect subsidiary of a corporation, is a Tennessee domiciled insurance company formed exclusively to provide benefits as a prescription drug plan under the federal government's Medicare Part D program. Taxpayer solely offers Medicare Part D plans to eligible participants. Taxpayer files zero liability gross premiums tax returns in all applicable states, including Indiana.

DISCUSSION

[IC 27-1-18-2](#), last amended in 2000, established a gross premium privilege tax on insurance companies not organized under Indiana law. Federal law, specifically 42 CFR §423.440, regarding Medicare Part D was later enacted, preempting state laws applicable to Medicare Part D plans offered by Part D plan sponsors. As a result of 42 CFR §423.440, Indiana's gross premium privilege tax was prohibited on Medicare Part D plans. Thus, taxpayer is not subject to [IC 27-1-18-2](#) since taxpayer solely issues Medicare Part D plans, which are exempt from gross premium privilege tax.

Under 42 CFR §423.440(b)(2), Part D plan sponsors are not, however, exempt from taxes related to net income or profit realized by the organization from business conducted under Part D. [IC 6-3-2-2.8\(4\)](#) only exempts insurance companies from adjusted gross income tax if the insurance company is subject to tax under [IC 27-1-18-2](#). As discussed above, however, taxpayer is not subject to tax under [IC 27-1-18-2](#) and is therefore not exempt from Indiana adjusted gross income tax under the provisions of [IC 6-3-2-2.8](#). Without this exemption, taxpayer remains subject to the corporate adjusted gross income tax as provided in [IC 6-3-2-1](#).

RULING #1

Is taxpayer subject to the Indiana gross premiums tax, even though its Medicare Part D premiums are exempt pursuant to federal law?

The Department rules that the taxpayer, who solely offers Medicare Part D plans, is not subject to the Indiana gross premiums tax because federal law, specifically 42 CFR §423.440, prohibits states from taxing premiums paid on behalf of a Part D plan enrollees or beneficiaries.

RULING #2

If taxpayer is subject to Indiana gross premium tax, then is taxpayer exempt from Indiana corporate income tax?

As stated above in Ruling #1, taxpayer is not subject to Indiana gross premium tax. However, [IC 6-3-2-2.8](#) provides that insurance companies are not subject to adjusted gross income tax when they are subject to tax under [IC 27-1-18-2](#). Because taxpayer is precluded from taxation under [IC 27-1-18-2](#) via the provisions of 42 CFR §423.440, taxpayer is not exempt from tax under [IC 6-3-2-2.8](#) and remains subject to adjusted gross income tax under [IC 6-3-2-1](#).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Posted: 10/29/2008 by Legislative Services Agency

